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8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/15-39

13 **RUDY'S SMOG CHECK,**  
**MARY ANN GARZA, Owner**  
83-386 Highway 111 #2  
Indio, CA 92201

**A C C U S A T I O N**

(SMOG CHECK)

14 Automotive Repair Dealer Registration No.  
15 ARD269017  
16 Smog Check - Test Only Station License No.  
TC 269017,

17 **DANIEL DAVID HOLSTER**  
80000 Avenue 48 Space 29  
18 Indio, CA 92201

19 Smog Check Inspector License No. EO 633118  
20 Smog Check Repair Technician License No. EI  
633118 (formerly Advanced Emission  
21 Specialist Technician License No. EA 633118)

and

22 **FRANCISCO GARZA III**  
23 53-100 Averda Villa  
24 La Quinta, CA 92253

25 Smog Check Inspector License No. EO 144083  
26 Smog Check Repair Technician License No. EI  
144083 (formerly Advanced Emission  
Specialist Technician License No. EA 144083)

27 Respondents.  
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Complainant alleges:

**PARTIES**

1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

**Respondent Mary Ann Garza**

2. On May 8, 2012, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration Number ARD 269017 to Mary Ann Garza (Respondent Owner), Owner of Rudy's Smog Check. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

3. On May 15, 2012, the Bureau issued Smog Check-Test Only Station License Number TC 269017 to Respondent Owner. The Smog Check-Test Only Station License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

**Respondent Daniel David Holster**

4. On May 12, 2011, the Bureau issued Advanced Emission Specialist Technician License Number EA 633118 to Daniel David Holster (Respondent Holster). Respondent Holster's advanced emission specialist technician license was due to expire on June 30, 2013, however, it was cancelled on May 1, 2013. Under California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, in accordance with Respondent Holster's election, as Smog Check Inspector License Number EO 633118 and Smog Check Repair Technician License Number EI 633118, effective May 1, 2013. Respondent Holster's smog check inspector license and smog check repair technician license were in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.<sup>1</sup>

<sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog (continued...)





1 which are done by the automotive repair dealer or any automotive technician,  
2 employee, partner, officer, or member of the automotive repair dealer.

3 (1) Making or authorizing in any manner or by any means  
4 whatever any statement written or oral which is untrue or misleading, and which  
5 is known, or which by the exercise of reasonable care should be known, to be  
6 untrue or misleading.

7 . . . .

8 (3) Failing or refusing to give to a customer a copy of any  
9 document requiring his or her signature, as soon as the customer signs the  
10 document.

11 (4) Any other conduct which constitutes fraud.

12 . . . .

13 (6) Failure in any material respect to comply with the provisions of  
14 this chapter or regulations adopted pursuant to it.

15 (b) Except as provided for in subdivision (c), if an automotive repair  
16 dealer operates more than one place of business in this state, the director pursuant  
17 to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily  
18 or permanently the registration of the specific place of business which has  
19 violated any of the provisions of this chapter. This violation, or action by the  
20 director, shall not affect in any manner the right of the automotive repair dealer to  
21 operate his or her other places of business.

22 (c) Notwithstanding subdivision (b), the director may refuse to validate, or  
23 may invalidate temporarily or permanently, the registration for all places of  
24 business operated in this state by an automotive repair dealer upon a finding that  
25 the automotive repair dealer has, or is, engaged in a course of repeated and willful  
26 violations of this chapter, or regulations adopted pursuant to it.

27 17. Section 9884.8 states:

28 All work done by an automotive repair dealer, including all warranty  
work, shall be recorded on an invoice and shall describe all service work done and  
parts supplied. Service work and parts shall be listed separately on the invoice,  
which shall also state separately the subtotal prices for service work and for parts,  
not including sales tax, and shall state separately the sales tax, if any, applicable  
to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall  
clearly state that fact. If a part of a component system is composed of new and  
used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The  
invoice shall include a statement indicating whether any crash parts are original  
equipment manufacturer crash parts or nonoriginal equipment manufacturer  
aftermarket crash parts. One copy of the invoice shall be given to the customer  
and one copy shall be retained by the automotive repair dealer.

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13. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost.

14. H & S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

....

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

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15. H & S Code section 44015 states in pertinent part:

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(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

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16. H & S Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

17. H & S Code section 44072.2 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (H & S Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

....

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

....

**REGULATORY PROVISIONS**

18. California Code of Regulations, title 16 (Regulations), section 3340.28, subdivision (e), states that “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

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19. Regulations, section 3340.30 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

....

20. Regulations, section 3340.35 states in pertinent part:

....

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

....

21. Regulations, section 3340.42 states:

With the exception of diesel-powered vehicles addressed in subsection (f) of this section, the following emissions test methods and standards apply to all vehicles:

(a) A loaded-mode test, except as otherwise specified, shall be the test method used to inspect vehicles registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the VLT Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle is not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

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1 (b) A two-speed idle mode test, unless a different test is otherwise  
2 specified in this article, shall be the test method used to inspect vehicles registered  
3 in all program areas of the state, except in those areas of the state where the  
4 enhanced program has been implemented. The two-speed idle mode test shall  
5 measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high  
6 RPM and again at idle RPM, as contained in the bureau's specifications  
7 referenced in subsection (b) of Section 3340.17 of this article. Exhaust emissions  
8 from a vehicle subject to this inspection shall be measured and compared to the  
9 emission standards set forth in this section and as shown in TABLE III. A vehicle  
10 passes the two-speed idle mode test if all of its measured emissions are less than  
11 or equal to the applicable emissions standards specified in Table III.

12 . . . .

13 (e) In addition to the test methods prescribed in this section, the following  
14 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog  
15 Check inspection:

16 (1) A visual inspection of the vehicle's emissions control systems. During  
17 the visual inspection, the technician shall verify that the following emission  
18 control devices, as applicable, are properly installed on the vehicle:

- 19 (A) air injection systems,
- 20 (B) computer(s) and related sensors and switches,
- 21 (C) crankcase emissions controls, including positive crankcase ventilation,
- 22 (D) exhaust gas after treatment systems, including catalytic converters,
- 23 (E) exhaust gas recirculation (EGR) systems,
- 24 (F) fuel evaporative emission controls,
- 25 (G) fuel metering systems, including carburetors and fuel injection,
- 26 (H) ignition spark controls, and

27 (I) any emissions control systems that are not otherwise prompted by the  
28 Emissions Inspection System, but listed as a requirement by the vehicle  
manufacturer.

(2) A functional inspection of the vehicle's emission control systems.  
During the functional inspection, the technician shall conduct, as applicable, the  
following tests and verifications of the vehicle:

. . . .

- (C) proper setting of ignition timing,

. . . .

23. Regulations, section 3373 states:

No automotive repair dealer or individual in charge shall, in filling out an  
estimate, invoice, or work order, or record required to be maintained by section  
3340.15(f) of this chapter, withhold therefrom or insert therein any statement or

1 information which will cause any such document to be false or misleading, or  
2 where the tendency or effect thereby would be to mislead or deceive customers,  
3 prospective customers, or the public.

### 4 COST RECOVERY

4 24. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the  
5 administrative law judge to direct a licentiate found to have committed a violation or violations of  
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
9 included in a stipulated settlement.

### 10 UNDERCOVER OPERATION: 1994 Toyota

11 19. On October 28, 2013, the Bureau conducted an undercover operation at  
12 Respondent Owner's smog check-test only station, Rudy's Smog Check. The Bureau's vehicle, a  
13 1994 Toyota, was modified to fail a proper smog inspection due to a missing pulse air injection  
14 (PAIR) component. A blocked off plate had been installed to seal the exhaust system where a  
15 PAIR component was removed.

16 20. A Bureau undercover operator took the vehicle to Respondent Owner's smog  
17 check-test only station. The operator requested a smog check inspection. The operator did not  
18 sign or receive a written estimate. Respondent Holster and Respondent Garza performed the  
19 smog inspections that resulted in improperly issued certificate for the California Inspection and  
20 Maintenance (I/M) Smog Check inspection. After the smog test was completed, the operator  
21 completed and signed a work order, paid \$60.00, and was provided invoice number [REDACTED]. The  
22 operator was also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance  
23 Number [REDACTED] and Respondent Holster's name as the smog technician who had performed  
24 the smog test.

25 21. On December 4, 2013, Bureau personnel re-inspected the vehicle after the smog  
26 test at Respondent Owner's smog check-test only station. The condition of the vehicle as  
27 modified before testing at Respondent Owner's smog check-test only station had not changed;

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1 the PAIR component was still missing. A smog inspection was performed and the overall test  
2 results were "Tamper," which means that a required part of the PAIR system was missing.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Misleading Statements)**

5 22. Respondent Owner has subjected her registration to discipline under Code section  
6 9884.7, subdivision (a)(1), in that on October 28, 2013, she made statements which she knew or  
7 which by exercise of reasonable care she should have known were untrue or misleading when  
8 she issued electronic Certificate of Compliance No. [REDACTED] for the 1994 Toyota, certifying  
9 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle  
10 had a missing PAIR component.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Provide a Written Estimate)**

13 23. Respondent Owner has subjected her registration to discipline under Code section  
14 9884.7, subdivision (a)(6), in that on October 28, 2013, she failed to comply with Code section  
15 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the  
16 smog inspection.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Violation of the Motor Vehicle Inspection Program)**

19 24. Respondent Owner has subjected her station license to discipline under H & S  
20 Code section 44072.2, subdivision (a), in that on October 28, 2013, regarding the 1994 Toyota,  
21 she violated the following sections of that Code:

22 a. **Section 44012, subdivision (f):** Respondent Owner failed to perform  
23 emission control tests on the vehicle in accordance with procedures prescribed by the  
24 department.

25 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic  
26 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle to  
27 determine if it was in compliance with section 44012 of that Code.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 25. Respondent Owner has subjected her station license to discipline under H & S  
4 Code section 44072.2, subdivision (c), in that on October 28, 2013, regarding the 1994 Toyota,  
5 she violated the following sections of the CCR:

6 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic  
7 Certificate of Compliance No. [REDACTED] even though the vehicle had not been inspected in  
8 accordance with H & S Code section 3340.42.

9 b. **Section 3340.42:** Respondent Owner failed to conduct the required smog  
10 tests and inspections on the vehicle in accordance with the Bureau's specifications.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Dishonesty, Fraud or Deceit)**

13 26. Respondent Owner has subjected her station license to discipline under H & S  
14 Code section 44072.2, subdivision (d), in that on October 28, 2013, regarding the 1994 Toyota,  
15 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing  
16 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona  
17 fide inspection of the emission control devices and systems on the vehicle.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program)**

20 27. Respondent Holster has subjected his Smog Check Inspector License to discipline  
21 under H & S Code section 44072.2, subdivision (a), in that on October 28, 2013, regarding the  
22 1994 Toyota, he violated the following sections of that Code:

23 a. **Section 44032:** Respondent Holster failed to perform tests of the emission  
24 control devices and systems on that vehicle in accordance with H & S Code section 44012, in  
25 that the vehicle had a missing PAIR component.

26 b. **Section 44059:** Respondent Holster willfully made false entries for  
27 electronic Certificate of Compliance No. [REDACTED] by certifying that the vehicle had been  
28 inspected as required when, in fact, it had not.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 28. Respondent Holster has subjected his Smog Check Inspector License to discipline  
4 under H & S Code section 44072.2, subdivision (c), in that on October 28, 2013, regarding the  
5 1994 Toyota, he violated the following sections of the CCR:

6 a. **Section 3340.30, subdivision (a):** Respondent Holster failed to inspect  
7 and test that vehicle in accordance with H & S Code section 44012.

8 b. **Section 3340.42:** Respondent Holster failed to conduct the required smog  
9 tests and inspections on that vehicle in accordance with the Bureau's specifications.

10 **EIGHTH CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud or Deceit)**

12 29. Respondent Holster has subjected his Smog Check Inspector License to discipline  
13 under H & S Code section 44072.2, subdivision (d), in that on October 28, 2013, he committed  
14 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
15 Certificate of Compliance No. [REDACTED] for the 1994 Toyota without performing a bona fide  
16 inspection of the emission control devices and systems on that vehicle.

17 **NINTH CAUSE FOR DISCIPLINE**

18 **(Violations of the Motor Vehicle Inspection Program)**

19 30. Respondent Garza has subjected his Smog Check Inspector License to discipline  
20 under H & S Code section 44072.2, subdivision (a), in that on October 28, 2013, regarding the  
21 1994 Toyota, he violated the following sections of that Code:

22 a. **Section 44032:** Respondent Garza failed to perform tests of the emission  
23 control devices and systems on that vehicle in accordance with H & S Code section 44012, in  
24 that the vehicle had a missing PAIR component.

25 b. **Section 44059:** Respondent Garza willfully made false entries for  
26 electronic Certificate of Compliance No. [REDACTED] by certifying that the vehicle had been  
27 inspected as required when, in fact, it had not.

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1 operator was also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance  
2 Number [REDACTED] and Respondent Holster's name as the smog technician who had performed  
3 the smog test.

4 35. On January 15, 2014, Bureau personnel re-inspected the vehicle after the smog test  
5 at Respondent Owner's smog check-test only station. The condition of the vehicle as modified  
6 before testing at Respondent Owner's smog check-test only station had not changed; the EGR  
7 component remained inoperative and tamper seal remained intact. A BAR-97 two speed idle test  
8 resulted in a failed inspection.

9 **TWELFTH CAUSE FOR DISCIPLINE**

10 **(Misleading Statements)**

11 36. Respondent Owner has subjected her registration to discipline under Code section  
12 9884.7, subdivision (a)(1), in that on January 13, 2014, she made statements which she knew or  
13 which by exercise of reasonable care she should have known were untrue or misleading when  
14 she issued electronic Certificate of Compliance No. [REDACTED] for the 1989 Ford, certifying  
15 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle  
16 had a non-functional Exhaust Gas Recirculation (EGR) valve on the intake manifold.

17 **THIRTEENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Provide a Written Estimate)**

19 37. Respondent Owner has subjected her registration to discipline under Code section  
20 9884.7, subdivision (a)(6), in that on January 13, 2014, she failed to comply with Code section  
21 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the  
22 smog inspection.

23 **FOURTEENTH CAUSE FOR DISCIPLINE**

24 **(Violation of the Motor Vehicle Inspection Program)**

25 38. Respondent Owner has subjected her station license to discipline under H & S  
26 Code section 44072.2, subdivision (a), in that on January 13, 2014, regarding the 1989 Ford, she  
27 violated the following sections of that Code:

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1 a. **Section 44012, subdivision (f):** Respondent Owner failed to perform  
2 emission control tests on the vehicle in accordance with procedures prescribed by the  
3 department.

4 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic  
5 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle to  
6 determine if it was in compliance with section 44012 of that Code.

7 **FIFTEENTH CAUSE FOR DISCIPLINE**

8 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

9 39. Respondent Owner has subjected her station license to discipline under H & S  
10 Code section 44072.2, subdivision (c), in that on January 13, 2014, regarding the 1989 Ford, she  
11 violated the following sections of the CCR:

12 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic  
13 Certificate of Compliance No. [REDACTED] even though the vehicle had not been inspected in  
14 accordance with H & S Code section 3340.42.

15 b. **Section 3340.42:** Respondent Owner failed to conduct the required smog  
16 tests and inspections on the vehicle in accordance with the Bureau's specifications.

17 **SIXTEENTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud or Deceit)**

19 40. Respondent Owner has subjected her station license to discipline under H & S  
20 Code section 44072.2, subdivision (d), in that on January 13, 2014, regarding the 1989 Ford, she  
21 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing  
22 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona  
23 fide inspection of the emission control devices and systems on the vehicle.

24 **SEVENTEENTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Motor Vehicle Inspection Program)**

26 41. Respondent Holster has subjected his Smog Check Inspector License to discipline  
27 under H & S Code section 44072.2, subdivision (a), in that on January 13, 2014, regarding the  
28 1989 Ford, he violated the following sections of that Code:



1 a. **Section 44032:** Respondent Garza failed to perform tests of the emission  
2 control devices and systems on that vehicle in accordance with H & S Code section 44012, in  
3 that the vehicle had a non-functional Exhaust Gas Recirculation (EGR) valve on the intake  
4 manifold.

5 b. **Section 44059:** Respondent Garza willfully made false entries for  
6 electronic Certificate of Compliance No. [REDACTED] by certifying that the vehicle had been  
7 inspected as required when, in fact, it had not.

8 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

9 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

10 45. Respondent Garza has subjected his Smog Check Inspector License to discipline  
11 under H & S Code section 44072.2, subdivision (c), in that on January 13, 2014, regarding the  
12 1989 Ford, he violated the following sections of the CCR:

13 a. **Section 3340.30, subdivision (a):** Respondent Garza failed to inspect and  
14 test that vehicle in accordance with H & S Code section 44012.

15 b. **Section 3340.42:** Respondent Garza failed to conduct the required smog  
16 tests and inspections on that vehicle in accordance with the Bureau's specifications.

17 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud or Deceit)**

19 46. Respondent Garza has subjected his Smog Check Inspector License to discipline  
20 under H & S Code section 44072.2, subdivision (d), in that on January 13, 2014, he committed  
21 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
22 Certificate of Compliance No. [REDACTED] for the 1989 Ford without performing a bona fide  
23 inspection of the emission control devices and systems on that vehicle.

24 **UNDERCOVER OPERATION: 1990 Toyota**

25 47. On February 5, 2014, the Bureau conducted an undercover operation at  
26 Respondent Owner's smog check-test only station, Rudy's Smog Check. The Bureau's vehicle, a  
27 1990 Toyota, was modified to fail a proper smog inspection due to the adjustment of the

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1 ignition to twenty degrees before top dead center (BTDC). A tamper indicator was placed to  
2 detect adjustments.

3 48. A Bureau undercover operator took the vehicle to Respondent Owner's smog  
4 check-test only station. The operator requested a smog check inspection. The operator did not  
5 sign or receive a written estimate. Respondent Holster and Respondent Garza performed the  
6 smog inspections that resulted in improperly issued certificate for the California Inspection and  
7 Maintenance (I/M) Smog Check inspection. After the smog test was completed, the operator  
8 completed and signed a work order, paid \$55.00, and was provided invoice number [REDACTED]. The  
9 operator was also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance  
10 Number [REDACTED] and Respondent Holster's name as the smog technician who had  
11 performed the smog test.

12 49. On February 13, 2014, Bureau personnel re-inspected the vehicle after the smog  
13 test at Respondent Owner's smog check-test only station. The condition of the vehicle as  
14 modified before testing at Respondent Owner's smog check-test only station had not changed; the  
15 tamper indicator was still intact. A smog inspection was performed and the vehicle failed the  
16 inspection for the timing out of specification.

17 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

18 **(Misleading Statements)**

19 50. Respondent Owner has subjected her registration to discipline under Code section  
20 9884.7, subdivision (a)(1), in that on February 5, 2014, she made statements which she knew or  
21 which by exercise of reasonable care she should have known were untrue or misleading when  
22 she issued electronic Certificate of Compliance No. [REDACTED] for the 1990 Toyota, certifying  
23 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle  
24 had the adjustment of the ignition to twenty degrees before top dead center.

25 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

26 **(Failure to Provide a Written Estimate)**

27 51. Respondent Owner has subjected her registration to discipline under Code section  
28 9884.7, subdivision (a)(6), in that on February 5, 2014, she failed to comply with Code section

1 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the  
2 smog inspection.

3 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 52. Respondent Owner has subjected her station license to discipline under H & S  
6 Code section 44072.2, subdivision (a), in that on February 5, 2014, regarding the 1990 Toyota,  
7 she violated the following sections of that Code:

8 a. **Section 44012, subdivision (f):** Respondent Owner failed to perform  
9 emission control tests on the vehicle in accordance with procedures prescribed by the  
10 department.

11 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic  
12 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle  
13 to determine if it was in compliance with section 44012 of that Code.

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

15 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

16 53. Respondent Owner has subjected her station license to discipline under H & S  
17 Code section 44072.2, subdivision (c), in that on February 5, 2014, regarding the 1990 Toyota,  
18 she violated the following sections of the CCR:

19 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic  
20 Certificate of Compliance No. [REDACTED] even though the vehicle had not been inspected in  
21 accordance with H & S Code section 3340.42.

22 b. **Section 3340.42:** Respondent Owner failed to conduct the required smog  
23 tests and inspections on the vehicle in accordance with the Bureau's specifications.

24 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud or Deceit)**

26 54. Respondent Owner has subjected her station license to discipline under H & S  
27 Code section 44072.2, subdivision (d), in that on February 5, 2014, regarding the 1990 Toyota,  
28 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing

1 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona  
2 fide inspection of the emission control devices and systems on the vehicle.

3 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program)**

5 55. Respondent Holster has subjected his Smog Check Inspector License to discipline  
6 under H & S Code section 44072.2, subdivision (a), in that on February 5, 2014, regarding the  
7 1990 Toyota, he violated the following sections of that Code:

8 a. **Section 44032:** Respondent Holster failed to perform tests of the emission  
9 control devices and systems on that vehicle in accordance with H & S Code section 44012, in  
10 that the vehicle had the adjustment of the ignition to twenty degrees before top dead center.

11 b. **Section 44059:** Respondent Holster willfully made false entries for  
12 electronic Certificate of Compliance No. [REDACTED] by certifying that the vehicle had been  
13 inspected as required when, in fact, it had not.

14 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

15 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

16 56. Respondent Holster has subjected his Smog Check Inspector License to discipline  
17 under H & S Code section 44072.2, subdivision (c), in that on February 5, 2014, regarding the  
18 1990 Toyota, he violated the following sections of the CCR:

19 a. **Section 3340.30, subdivision (a):** Respondent Holster failed to inspect  
20 and test that vehicle in accordance with H & S Code section 44012.

21 b. **Section 3340.42:** Respondent Holster failed to conduct the required smog  
22 tests and inspections on that vehicle in accordance with the Bureau's specifications.

23 **THIRTIETH CAUSE FOR DISCIPLINE**

24 **(Dishonesty, Fraud or Deceit)**

25 57. Respondent Holster has subjected his Smog Check Inspector License to discipline  
26 under H & S Code section 44072.2, subdivision (d), in that on February 5, 2014, he committed  
27 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic

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1 Certificate of Compliance No. [REDACTED] for the 1990 Toyota without performing a bona fide  
2 inspection of the emission control devices and systems on that vehicle.

3 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program)**

5 58. Respondent Garza has subjected his Smog Check Inspector License to discipline  
6 under H & S Code section 44072.2, subdivision (a), in that on February 5, 2014, regarding the  
7 1990 Toyota, he violated the following sections of that Code:

8 a. **Section 44032:** Respondent Garza failed to perform tests of the emission  
9 control devices and systems on that vehicle in accordance with H & S Code section 44012, in  
10 that the vehicle had the adjustment of the ignition to twenty degrees before top dead center.

11 b. **Section 44059:** Respondent Garza willfully made false entries for  
12 electronic Certificate of Compliance No. [REDACTED] by certifying that the vehicle had been  
13 inspected as required when, in fact, it had not.

14 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

15 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

16 59. Respondent Garza has subjected his Smog Check Inspector License to discipline  
17 under H & S Code section 44072.2, subdivision (c), in that on February 5, 2014, regarding the  
18 1990 Toyota, he violated the following sections of the CCR:

19 a. **Section 3340.30, subdivision (a):** Respondent Garza failed to inspect and  
20 test that vehicle in accordance with H & S Code section 44012.

21 b. **Section 3340.42:** Respondent Garza failed to conduct the required smog  
22 tests and inspections on that vehicle in accordance with the Bureau's specifications.

23 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

24 **(Dishonesty, Fraud or Deceit)**

25 60. Respondent Garza has subjected his Smog Check Inspector License to discipline  
26 under H & S Code section 44072.2, subdivision (d), in that on February 5, 2014, he committed  
27 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic

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1 Certificate of Compliance No. [REDACTED] for the 1990 Toyota without performing a bona fide  
2 inspection of the emission control devices and systems on that vehicle.

3 **OTHER MATTERS**

4 61. Under Health and Safety Code section 44072.8, if Smog Check - Test Only  
5 Station License Number TC 269017, issued to Mary Ann Garza, doing business as Rudy's Smog  
6 Check, is revoked or suspended, Automotive Repair Dealer Registration Number ARD 269017  
7 and any additional license issued under this chapter in the name of said licensee may be likewise  
8 revoked or suspended by the director.

9 62. Under Health and Safety Code section 44072.8, if Smog Check Inspector License  
10 Number EO 633118 issued to Daniel David Holster, is revoked or suspended, Smog Check  
11 Repair Technician License Number EI 633118 and any additional license issued under this  
12 chapter in the name of said licensee may be likewise revoked or suspended by the director.

13 63. Under Health and Safety Code section 44072.8, if Smog Check Inspector License  
14 Number EO 144083 issued to Francisco Garza III, is revoked or suspended, Smog Check Repair  
15 Technician License Number EI 144083 and any additional license issued under this chapter in  
16 the name of said licensee may be likewise revoked or suspended by the director.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
19 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

20 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
21 269017, issued to Mary Ann Garza, Owner of Rudy's Smog Check;

22 2. Revoking or suspending Smog Check-Test Only Station License Number TC  
23 269017, issued to Mary Ann Garza, Owner of Rudy's Smog Check;

24 3. Revoking or suspending Smog Check Inspector License Number EO 633118,  
25 issued to Daniel David Holster;

26 4. Revoking or suspending Smog Check Repair Technician License Number EI  
27 633118, issued to Daniel David Holster;

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1           5.       Revoking or suspending Smog Check Inspector License Number EO 144083,  
2 issued to Francisco Garza III;

3           6.       Revoking or suspending Smog Check Repair Technician License Number EI  
4 144083, issued to Francisco Garza III;

5           7.       Ordering Mary Ann Garza, Daniel David Holster and Francisco Garza III to pay  
6 the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of  
7 this case, pursuant to Business and Professions Code section 125.3;

8           8.       Taking such other and further action as deemed necessary and proper.

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DATED: September 15, 2014 

PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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